

Office of the Independent Police Auditor

Monthly Report

September 2012



October 8, 2012

This report is filed pursuant to the BART Citizen Oversight Model, Chapter 1-05 (A), which requires the Office of the Independent Police Auditor (OIPA) to submit reports to the Citizen Review Board. This report provides information for the period September 1, 2012 through September 30, 2012.¹

Quantitative Report

	Number of Cases Filed ²	Number of Open Cases ³	Number of OIPA Investigations Concluded ⁴	Number of Cases Appealed to OIPA ⁵	Number of Cases Appealed by CRB ⁶
June 27, 2011 – October 31, 2011	32	53	0	0	0
November 2011	11	60	0	0	0
December 2011	4	56	0	0	0
January 2012	6	58	0	0	0
February 2012	14	57	0	0	0
March 2012	7	61	0	1	0
April 2012	6	55	0	1	0
May 2012	10	54	0	0	0
June 2012	13	61	1	0	0
July 2012	7	58	0	0	0
August 2012	13*	60*	0	0	0
September 2012	8	57	1	0	0

*The Number of Cases Filed has been adjusted up by one from what was previously reported on the August 2012 report due to an error in the Internal Affairs case database that has since been corrected. The case that was not previously reported on in the August 2012 report is noted below. The Number of Open Cases for August 2012 did not change, however, due to a second error involving a closed case that was not previously marked as closed in the Internal Affairs case database. That error has also been corrected and the closed case that was not previously reported on is also noted below.

Types of Cases Filed

Citizen Complaints	5
Administrative Investigations	0
Comments of Non-Complaint	3
TOTAL	8

Citizen Complaints Received per Department

OIPA	0
BART Police Department	5
TOTAL	5

Complaints/Investigations Initiated During a Previous Reporting Period**Actions Taken/# of Days Elapsed**

During the month of August 2012, 1 Citizen Complaint was received by the BART Police Department that was not previously reported on due to an error in the Internal Affairs database that has since been corrected:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed ⁷
1 (IA2012-070)	Performance of Duty; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	58

Complaints/Investigations Initiated During Reporting Period**Actions Taken/# of Days Elapsed**

During the month of September 2012, 5 Citizen Complaints were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-080)	Arrest or Detention; Conduct Unbecoming an Officer; Courtesy	BART PD initiated an investigation.	15
2 (IA2012-079)	Performance of Duty	BART PD initiated an investigation.	20
3 (IA2012-081)	Bias Based Policing	BART PD initiated an investigation.	23
4 (IA2012-078)	Policy Complaint	BART PD initiated an investigation.	26
5 (IA2012-077)	Procedure	BART PD initiated an investigation.	32

During the month of September 2012, 3 Comments of Non-Complaint were received by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Action Taken	Number of Days Elapsed Since Complaint Filed
1 (IA2012-082)	Performance of Duty	BART PD initiated an investigation.	10
2 (IA2012-076)	Performance of Duty	BART PD initiated an investigation.	27
3 (IA2012-075)	Performance of Duty; Courtesy	BART PD initiated an investigation.	35

Complaints/Investigations Concluded During Reporting Period

Dispositions/# of Days Elapsed

During the month of September 2012, 1 Citizen Complaint was concluded by the OIPA:

Complaint # (OIPA Case #)	Nature of Complaint	Disposition ⁸	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (OIPA 11-09)	<u>Police Officer #1</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling <u>Police Officer #2 (Retired)</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling <u>Police Officer #3</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling <u>Police Officer #4</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling <u>Police Officer #5</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling 	<u>Police Officer #1</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling – Unfounded <u>Police Officer #2 (Retired)</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling – Unfounded <u>Police Officer #3</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling – Unfounded <u>Police Officer #4</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling – Unfounded <u>Police Officer #5</u> <ul style="list-style-type: none">• Racial/Bias Based Profiling – Unfounded 	340	309

	<u>Police Officer #6</u> <ul style="list-style-type: none"> • Racial/Bias Based Profiling 	<u>Police Officer #6</u> <ul style="list-style-type: none"> • Racial/Bias Based Profiling – Unfounded 	340	309
--	--	--	-----	-----

During the month of September 2012, 5 Citizen Complaints were concluded by the BART Police Department:

Complaint # (IA Case #)	Nature of Complaint	Disposition	Number of Days Elapsed Since Complaint Filed	Number of Days Taken to Complete Investigation
1 (IA2012-021)	<u>Civilian #1</u> <ul style="list-style-type: none"> • Discrimination • Conduct Unbecoming an Officer • Courtesy 	<u>Civilian #1</u> <ul style="list-style-type: none"> • Discrimination – Unfounded • Conduct Unbecoming an Officer – Unfounded • Courtesy – Unfounded 	215	181
2 (IA2012-020)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Excessive Use of Force <u>Police Officer #2</u> <ul style="list-style-type: none"> • Excessive Use of Force <u>Police Officer #3</u> <ul style="list-style-type: none"> • Excessive Use of Force 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Excessive Use of Force – Unfounded <u>Police Officer #2</u> <ul style="list-style-type: none"> • Excessive Use of Force – Unfounded <u>Police Officer #3</u> <ul style="list-style-type: none"> • Excessive Use of Force – Unfounded 	215	201
3 (IA2011-081)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing • Conduct Unbecoming an Officer • Courtesy 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Bias Based Policing – Unfounded • Conduct Unbecoming an Officer – Not Sustained • Courtesy – Not Sustained 	304	278

4 (IA2011-077)	<u>Police Officer #1 (Retired)</u> <ul style="list-style-type: none"> • Annoying/Harassing Phone Calls • Conduct Unbecoming an Officer 	<u>Police Officer #1 (Retired)</u> <ul style="list-style-type: none"> • Annoying/Harassing Phone Calls – Sustained • Conduct Unbecoming an Officer – Sustained 	321	300
5 (IA2011-073)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Illegal Arrest/Detention • Use of Force 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Illegal Arrest/Detention – Unfounded • Use of Force – Exonerated 	329	299

During the month of September 2012, 1 Administrative Investigation was concluded by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Investigation Initiated	Number of Days Taken to Complete Investigation
1 (IA2011-049)	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty • Supervision <u>Police Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty <u>Civilian #1</u> <ul style="list-style-type: none"> • Performance of Duty 	<u>Police Officer #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained • Supervision – Sustained <u>Police Officer #2</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained <u>Civilian #1</u> <ul style="list-style-type: none"> • Performance of Duty – Sustained 	398	365

During the month of September 2012, 5 Comments of Non-Complaint were addressed by the BART Police Department:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-076)	Performance of Duty	Supervisory Referral	27	15
2 (IA2012-075)	Performance of Duty; Courtesy	Supervisory Referral	35	18
3 (IA2012-069)	Performance of Duty	Supervisory Referral	60	30
4 (IA2012-065)	Arrest or Detention; Performance of Duty	Supervisory Referral	54	43
5 (IA2012-017)	Performance of Duty	Service Review ⁹	223	199

Complaints/Investigations Concluded During a Previous Reporting Period

Dispositions/# of Days Elapsed

During the month of August 2012, 1 Comment of Non-Complaint was addressed by the BART Police Department that was not previously reported on due to a delay in obtaining finalized information about the completion of the case:

Comment # (IA Case #)	Nature of Comment	Disposition	Number of Days Elapsed Since Comment Filed	Number of Days Taken to Address Comment
1 (IA2012-062)	Performance of Duty; Courtesy	Supervisory Referral	70	17

¹ In addition to reporting on complaints received by the BART Police Department, the Citizen Oversight Model requires reporting on all complaints received by the "Citizen Board, Office of the District Secretary, and other District departments." As complaints received by the Citizen Board are customarily directed to the OIPA for further action, such complaints are included in the Quantitative Report above; the OIPA is not aware of additional complaints about the BART Police Department received by the Office of the District Secretary or other District departments.

² This number includes all Citizen Complaints filed against members of the BART Police Department, as well as Administrative Investigations generated internally by BART Police Department members (as opposed to being filed by a citizen). This number also includes what the BART Police Department manual defines as "Comments of Non-

Complaint;" these are comments "on the actions of a department employee, where the reporting party expressly states that they do not want to make a complaint." (BART Police Department Policy Manual, Policy 1020.1.1(e)).

³ This number indicates all investigations that are open as of the end of the reporting period. It includes Citizen Complaints (regardless of whether the investigation is being conducted by OIPA, the BART Police Department, or both), Comments of Non-Complaint, and Administrative Investigations.

⁴ This number includes all cases completed by OIPA during the reporting period that are required by the BART Citizen Oversight Model to be submitted to the Citizen Review Board. It therefore includes independent investigations, as well as reviews of completed BART Police Department investigations initiated via appeal from a complainant. Unless otherwise noted, it does not include reviews of BART Police Department investigations initiated at the discretion of OIPA, which happen commonly and do not always generate a formal report; it also does not include reviews conducted by OIPA of complaint investigations where the complaint was filed with OIPA but did not fall under OIPA's investigative jurisdiction.

⁵ This number refers to appeals filed with OIPA by complainants who have been issued the findings of the BART Police Department's internal investigation into their complaint regarding on-duty incidents. The OIPA has a responsibility to review such appeals pursuant to the BART Citizen Oversight Model, Chapter 1-04 (E).

⁶ This number refers to all appeals initiated by the Citizen Review Board after receiving and reviewing the findings issued by the OIPA in a given case. The routes of all such appeals are described in detail in the BART Citizen Oversight Model, Chapter 1-04 (B) (iv-v).

⁷ In all cases where it appears in this report, unless otherwise noted, the number of days elapsed refers to the number of days between the date of the complaint and the date of the report (as noted on the front page).

⁸ In defining the "Disposition of Internal Investigations," the BART Police Department Manual indicates that the Chief of Police will determine a finding of disposition for each allegation as follows:

(a) Unfounded - The investigation clearly established that the allegation is not true, or that the complaint was frivolous per Penal Code § 832.5(c).

(b) Exonerated - The investigation clearly established that the act, which provided the basis for the allegation of misconduct, did occur but was justified, lawful, and proper.

(c) Sustained - The investigation disclosed sufficient evidence that the act occurred and that it did constitute misconduct.

(d) Not-Sustained - The investigation established that there is not sufficient evidence to either sustain the allegation or to fully exonerate the employee. This includes situations in which the reporting party and/or witness(es) fail to cooperate in disclosing information needed to further the investigation, or they are no longer available. (BART Police Department Policy Manual, Policy 1020.7)

⁹ Per the BART Police Department, a "Service Review" may occur when a citizen/patron raises a concern pertaining to a global practice throughout the Department such as Department policies, procedures and/or tactics. When appropriate, a Service Review may be conducted by Internal Affairs or by a designated review committee, who in turn will make recommended changes to the Chief of Police for approval.